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Supreme Court, U.S.
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No. 08-454

In The
Supreme Court of the United States

JUANITA M. CRUMP-DONAHUE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR REHEARING

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December 3, 2008

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PETITION FOR REHEARING

Petitioner's Case: Petitioner has been barred from proceeding with a Federal Tort Claims Act Case against the United States in the district court, based on the *Res Judicata Doctrine* due to a prior dismissed with prejudice judgment of a *Bivens-type Case*, because they both concerned the wrongdoing by federal law enforcement agencies.

> Question: As a matter of law, under the Federal Tort Claims Act (FTCA), does a *Bivens* Judgment trigger the FTCA Judgment Bar, under 28 U.S.C. Section 2676, to bar a subsequently filed FTCA Tort Case.

Petitioner requests this petition for rehearing because she believes her case is "certworthy," due to the fact that: (1) it clearly raises an important federal questions of statutory law of general interest concerning the Federal Tort Claims Act, Judgment Bar and how it is to be used; (2) it shows how the Eighth circuit's decision (in this case) conflicts with a recent Seventh Circuit Appeals Court's ruling that the FTCA Judgment Bar cannot be replaced with the *Res Judicata Doctrine;* and (3) it shows how the Eighth Circuit's decision also conflicts with governing U. S. Supreme Court precedent in *Will v. Hallock* regarding how the Federal Tort Claims Act Judgment Bar is to be used. Basically, this petition seeks a consistent answer of law concerning how and when the FTCA Judgment Bar can be triggered to bar a subsequently filed FTCA Tort Case.

Petitioner believes if the Court sees no conflict in the recent Seventh Circuit's Ruling in *Steven Manning*

v. United States of America and Robert Buchan and Gary Miller, (Northern District of Illinois, Cook County, October 07, 2008), and its own ruling in *Will v. Hallock,* 546 U.S. 345 (2006), it will consider her case "certworthy." Both Rulings consistently . . . interpret the Federal Tort Claims Act, Judgment Bar Statute as only triggered "after a FTCA Case has gone to judgment in the Government's favor," rather than that it can be triggered by a *Bivens* Judgment. This correct interpretation is necessary to grant this petition, and allow petitioner to proceed with her Federal Tort Claims Act Case on the Merits.

In *Manning's,* the appeals court focused on the FTCA judgment bar. On October 07, 2008, the United States Court of Appeals for the Seventh Circuit held:

> "If a federal law enforcement officer commits a tort, the victim has two distinct avenues of relief: he may pursue a constitutional tort claim against the individual office under *Bivens v Six Unknown Named Agents of Federal Bureau of narcotics,* 403 U.S. 388, 91 S.Ct. 199, 29 L.Ed.3d 619 (1971), or he may pursue a common law tort claim against the United States pursuant to the Federal Tort claims Act ("FTCA"), 28 U.S.C. Sections 1346, 2671-80. The latter avenue is subject to an important caveat. Under 28 U.S.C. Section 2676, a judgment in an FTCA action acts as a complete bar to any action by the claimant." The Seventh Circuit also said. ".....Congress did not import common law res judicata into Section 2676. The [FTCA] judgment bar stands on its own."

Considering the consistency in *Will v. Hallock*, and *Manning's* interpretation of the Statutory provision of the Federal Tort Claims Act Judgment Bar, petitioner prays this Court will allow her to proceed on the merits of her Federal Tort Claims Act Case since a prior FTCA judgment bar has not been raised to bar her instant FTCA case under 2676.

This petition should be granted.

Respectfully submitted,

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CERTIFICATION

The foregoing is restricted to the grounds specified in 44.2 Sup. Ct. R. and it is presented in good faith and not for delay.

Juanita M. Crump-Donahue /s/

Juanita M. Crump-Donahue, *pro* se